THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition NO.13255 of 2003

Date: 14th September, 2006

Between :-

M/s.Sai Arvind Builders Pvt.Ltd., a company incorporated under provisions of the Companies Act, 1956 having its Registered Office at Pandurangapuram, Visakhapatnam
Rep. by its Managing Director G.K.Narasimha Rao
.. Petitioner

and

Government of Andhra Pradesh rep.by Its Secretary, Municipal Administration & Urban Development,
Secretariat Buildings, Hyderabad and another ..
Respondents

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ORDER:-

1. Heard Sri O.Manohar Reddy, the learned Counsel representing Mr.Ramana, the Counsel for petitioner and the learned Government Pleader for Municipal Administration and Sri Ranga Reddy, the learned Standing Counsel representing the 2nd respondent.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the second respondent in issuing the Proceedings BA.No.1768/96/G2 dated 30-5-2003 as illegal, arbitrary and violative of Article 14 of the Constitution of India and also violative principles of natural justice and consequently suspend the operation of the said proceedings by permitting the petitioner to proceed with the construction in terms of the sanction vide Proceedings B.A.No.1768/96/ACP-I dated 12-3-1998 and to pass such other suitable orders.

3. It is stated by the petitioner company that the petitioner company intended to construct a multi-storeyed complex in an area admeasuring 7200 sq.yds in T.S.No.153, A1 & B (Part) Block No.7, Ward No.20 of Maharanipeta, Visakhapatnam. In furtherance to the

same, the petitioner company made an application on 30-9-96 and on the said application, proceedings were issued by the second respondent agreeing for construction with certain conditions. It is also stated that one of the conditions stipulated is that the petitioner company has to surrender an extent of 924 sq.yds., free of cost to the second respondent Corporation for road widening purposes and the same was done. It is also stated that the second respondent Corporation's Technical Committee held a meeting and in the said meeting The Chief Engineer of the said Corporation, Chairman of Institution of Engineers (India) Visakhapatnam Local Centre, Superintendent Engineer, Roads & Buildings, Visakhapatnam, City Planner, Visakhapatnam, Municipal Corporation and Planning Officer of Visakhapatnam Urban Development Authority were present. It is further stated that all the members so present in the Technical Committee meeting held had passed a resolution recommending the Municipal Corporation of Visakhapatnam to accord permission for construction of a multi-storeyed building and the said resolution has also been endorsed by the Town Planning Wing of the second respondent and the same is evident by its proceedings No. Rc.1768/96/ACP.I dated 21-1-2000. It is also stated that on a reading of the same, it is

submitted that the endorsement clearly shows that the proposals for the additional construction of three more floors over and above the permitted Cellar, Stilt, Ground plus 10 upper floors in Block “A” have been examined in detail with reference to G.O.Ms.No.423 M.A., DATED 31-7-1998 and it was found that the same is in accordance with the same. It is also stated that the petitioner company was asked to submit a revised plan and No Objection Certificate from Air Port Authority and Director of Fire Services. It is further stated that in furtherance thereto, the petitioner company submitted both the No Objection Certificate from the Air Port Authority and Director of Fire Services. It is also stated that after the said exercise, the proceedings dated 6-9-2001 had been issued. It is also further stated that even before the said proceedings were issued, in terms of Condition No.3, the Corporation had already addressed a communication to the Government on 27-7-2001 seeking the Government’s clarification insofar as 11, 12 and 13th floors are concerned. The Government after receipt of the same, on 6-9-2002 addressed the Commissioner of second respondent vide proceedings No.19758/M2/2001-2 M.A. to take action and to look into the matter in terms of G.O.Ms.No.33 M.A. dated 3-2-2001. It is further stated

that on a reading of the G.O., it is clear that the powers have been delegated to the Commissioner of second respondent Corporation to look into the matter and on coming to know of the same, the petitioner company addressed a communication to the second respondent by its letter dated 5-5-2003 calling upon the second respondent to accord permission for the additional floors, as agreed to. It is stated that to the utter surprise and shock of the petitioner company, the second respondent by proceedings dated 30-5-2003 had rejected the petitioner company's request for construction of three more additional floors. It is also stated that the impugned Order is contrary to the very sanction that had been accorded to the petitioner company in respect of the land on which the units have been constructed. It is stated that every condition stipulated has been scrupulously has been complied with by the petitioner company and since the Government has called upon the Corporation to take action in terms of G.O.Ms.No.33 M.A., dated 3-2-2001, the second respondent without any reason whatsoever refused to accede to the said request. It is also stated that the said G.O. is much prior to the said recommendation. Several other factual details also had been narrated.

4. A counter affidavit was filed by the second respondent and a reply affidavit also was filed to the said

counter affidavit.

5. In the counter affidavit filed by the second respondent, it was stated that it is a fact that the petitioner submitted proposal to the Corporation seeking approval for the proposed construction in “A” Block consisting of Stilt floors exclusively for parking, Ground + 8 upper floors comprising of 77 units, “B” Block for clinic consisting of Stilt floor, Ground and First floors and “C” Block consisting of Ground and First floors for residential purpose respectively. It is also stated that the proposal submitted by the petitioner has been examined in detail with reference to the G.O.Ms.No.310 M.A., dated 11-5-1993 and Zoning Regulations and since the proposals submitted by the petitioner were in accordance with the G.O. in force, permission was granted to the petitioner vide B.A.No.1768/96/ACP-I, dated 12-3-98 after placing the subject before the Committee. It is further stated that the permission accorded on 12-3-98 for “A” Block consisting of Stilt floor for parking and part of Tot-lot, Ground + 8 upper floors and “B” Block consisting of Stilt floor + G.F. + First floor for clinic purpose and “C” Block consisting of G.F. + F.F. for residential purpose but the petitioner failed to complete the construction within stipulation time and constructed only basement. It is also

stated that subsequently the petitioner submitted revised plans seeking approval from the Corporation for additional two floors on the approved 8th floor i.e., 9th and 10th floors and after thorough scrutiny and after observing the provisions contained in G.O.Ms.No.310 MA, dated 11-5-93 and G.O.Ms.No.274 MA, dated 19-5-94 the revised permission was granted to the petitioner vide B.A.No.1768/96/ACP-I, dated 2-4-98 with "A" Block consisting of Stilt floor for parking and part of Tot-lot, G.F. + 10 upper floors, "B" Block consisting of Stilt + G.F. + First Floor and "C" Block consisting of G.F. + F.F. for residential purpose. It is also stated that it might be a fact that the petitioner left certain extent for the road widening purpose. It is further stated that since the petitioner handed over 10 feet road strip to the Corporation, the petitioner have been given a benefit of deletion of road by VUDA and the Corporation accorded the building permission, but the petitioner failed to form the 30'-0" wide road as specified by the VUDE vide R.C.No.1326/96/G1, dated 17-11-97 and also failed to hand over the road widening portion by way of gift deed. It is also stated that while obtaining building permission for a multistoried building i.e., Basement, Stilt, Ground + 10 upper floors, the petitioner failed to pay the security depost of Rs.3,87,600

and at the time of obtaining approval the G.O.Ms.No.423 MA, dated 31-7-98 came into force. It is also further stated that the petitioner again proposed to construct three more floors on the approved 10th floor i.e., 11th, 12th and 13th floors and the proposal submitted by the petitioner was scrutinized with reference to G.O.Ms.No.310 MA, dated 11-5-93, G.O.Ms.No.274 MA, dated 19-5-94, G.O.Ms.No.15 MA, dated 5-1-98 and also with reference to the G.O.Ms.No.423 MA, dated 31-7-98. It is further stated that the site is abutting to 100'-0" wide beach road on east, and 20'-0" wide B.T.Road on South and 30'-0" wide road at Northwest corner and originally as per the Maharanipeta T.P.Scheme 30 feet wide road was proposed through the petitioner's site on North connecting beach road. It is further stated that the vendor of the petitioner has approached the Corporation for deletion of the 30 feet road, which passed through his site and the Corporation after examination considered the request of the applicant and deleted the road subject to the condition that the applicant has to surrender the land to the Corporation for widening the existing 20 fet wide road to 30 feet wide road on South West corner. It is stated that the proposal now submitted comes under the purview of the MSBR, 1981 and according to the said provisions the

site should abut minimum 40'-0" wide road. It is also stated that the site under reference is abutting to 100'-0" wide beach road on east, but in between the 100'-0" wide beach road there is a footpath and green belt and hence the site is not getting any direct access from the 100'-0" wide beach road and further the site also abutting to 30'-0" wide road on south (existing 20 feet to be widen to 30 feet taking 10 feet from the petitioner's site as per VUDA condition while deleting 30 feet wide road on North-West corner). It is also further stated that the total height of the building of Block "A" consisting of Basement, Stilt, Ground + 13 upper floors is 43.10 Mts and as per MSBR, 1981 maximum permissible height is 30 mts. Height and as per G.O.Ms.No.423 MA, dated 31-7-98 there is no height restrictions, but the setbacks prescribed is basing on the height of the building up to 30 mts height extrar 4.00 mts. Is required. It is also stated that the Corporation has already granted permission for Basement, Stilt, Ground + 10 floors with 8.40 mts. And 9.90 mts. Duly relaxing setbacks as per G.O.Ms.No.15 MA, dated 15-1-98 up to 10 floors subject to conditions specified, but the applicant has failed to hand over the affected road-widening portion as per the condition laid down in Item No.11. It is further stated that the additional floors i.e., 11^{th}, 12^{th} and 13^{th}

floors is exceeding 30 mts. which cannot be allowed through the G.O.Ms.No.423 MA, dated 31-7-98 specifies no height limitation. It is further stated that as per the MSBR, 1981 the maximum permissible height is 30 mts., and setback required is 10 mts., around the building and similarly, the present height of the building is 43.10 mts., for which the minimum setback required is 14 mts. It is also further stated that it is a fact that the petitioner submitted No Objection Certificate from Fire and Airport authorities on receiving on endorsement issued by the Corporation. It is also stated that the said certificates submitted by the petitioner shall not bind on the Corporation to release permission for the proposed additional three floors i.e., 11th, 12th and 13th floors and the concerned authorities have issued the said certificates as per their rules and regulations, which shall not bind on the Corporation. It is further stated that the Government in its Memo No.19768/M2/2001-02 MA dated 3-9-2002 was pleased to direct the Corporation to examine the entire issue afresh in the light of G.O.Ms.No.33 MA, dated 3-2-2002. It is also stated that the second respondent Corporation after receiving the clarification from the Government had examined the case with reference to G.O.Ms.No.33 MA, dated 3-2-2002 and addressed a letter

to the petitioner on 30-5-2003. It is further stated that VUDA in its resolution No.27, dated 22-9-97 approved the deletion of 30 feet scheme road which was passing through the site subject to certain conditions. Accordingly, the VUDA vide in its proceedings in R.C.No.1326/96/G1, dated 17-11-97 deleted the 30 feet road subject to the following conditions:-

1) The applicant has to handover 924 Sq.mts., of land for the road widening to enable the Visakhapatnam Municipal Corporation to widen the existing adjoining 20 feet road to make 30 feet road at free of cost as shown in the plan;
2) The applicant should form by widening 30 feet new road portion as per standard specification of the Visakhapatnam Municipal Corporation for having proper approach to the site and existing Jain Temple; and
3) The applicant shall obtain building permission from Visakhapatnam Municipal Corporation by paying requisite development charges and submitting all necessary documents.

It is also stated that the petitioner had submitted building permission for construction of multi-storied building and accordingly the permission accorded in the year 1998 and the petitioner was given a benefit of deletion of road by VUDA and the Corporation for handing over 10 feet road strip to the Visakhapatnam Municipal Corporation to

enable the authority to accord the building permission. The benefit shall be given only at once but not number of times. It is also stated that G.O.Ms.No.33 MA, dated 3-2-2002 is subsequent to the building permission and VUDA's proceedings dated 17-11-97. It is also further stated that as per G.O.Ms.No.33 MA, dated 3-2-2002, two floors can permit for parking for the site area more than 1,000 sq.mts. In view of the above and in examining the proposals with G.O.Ms.No.310 & 274 the respondent Corporation accorded approval in favour of the petitioner for the proposed construction i.e., Basement + Stile exclusively for parking, G + 10 upper floors for residential flats. It is also stated that in view of the endorsement issued by the second respondent Corporation dated 30-5-2003, it is clinchingly establish that there are no required setback in respect of the said proposed additional three floors i.e., 11th, 12th and 13th floors and hence the case of the petitioner shall not attrack G.O.Ms.No.33 MA, dated 3-2-2002.

6. In the reply affidavit it was stated that a revised plan was submitted only at the behest of the authorities and that too after Technical Committee meeting as stated by the petitioner in para 5 of the wrist affidavit. The revised plan so submitted was also approved. On a reading of

para 3 of the counter affidavit, the authority is not even aware as to what is the extent of land that the was surrendered and it simply stated that it might be a fact that certain extent of land was left for road widening. In fact, the total extent of 924 sq.mts., was given to the Corporation at free of cost and the same is evident on a reading of the letter of the Commissioner dated 7-4-2002. It is incorrect to state that the petitioner failed to form 30 feet wide road. The entire road has been formed with side drains. The averment that an amount of Rs.3,87,600/- was not paid by the petitioner is incorrect. At no point of time, the Corporation made any demand for the said security amount. The respondent Corporation is called upon to produce before this Court any material to show that the petitioner was called upon to pay the said sum. If, as per law, the said amount is to be payable by the petitioner, the petitioner is always ready and willing to pay the said amount. In fact, the averments in the said para are contrary to the proceedings dated 12-12-2002. It is also stated in para 5 of the reply affidavit that it is a fact that the petitioner proposed to construct 3 more additional floors. It is a fact that the petitioner's proposal was scrutinized by the multi-storied building committee and the same favourably recommended. The averments with regard to the petitioner's vendor's objection has absolutely

no relevance to the issue in question. It was also further stated in the reply affidavit that the second respondent had categorically stated that in terms of G.O.Ms.No.423, Municipal Administration dated 31-7-98 there are no height restrictions. It was further stated that in fact the petitioner's case was considered only in terms of the said G.O., therefore the averments made in para 5 are contrary to the terms of the said G.O. which run counter to the very consideration under which the petitioner's case was considered. It was also stated that the certificates submitted by the petitioner shall not bind the second respondent to release permission is without any merit or substance and in fact Certificates were submitted as per the requirement under Law and that too at the instance of the second respondent itself and therefore it is not open to the second respondent to state before this Court that the certificate would not bind the second respondent. It was also stated that the Government has recommended the case of the petitioner and when the Government called upon the second respondent to pass orders, the second respondent once again referred the matter to the Government and therefore the Government in view of G.O.Ms.No.33 dated 3-2-2002 has once again called upon the second respondent to act in terms of the said

G.O., and instead of acting in terms of the same, the impugned Order has been passed without application of mind. It was further stated in para 9 of the reply affidavit that after handing over 10 feet road strip, benefit was given, but the benefit was only given once. It was further stated that since G.O.Ms.No.33, dated 3-3-2002 also entitles the petitioner for certain relaxations which is independent of 10 feet road strip surrendered, the petitioner is entitled to the said benefit and this by itself cannot be stated that the benefit was given for the very same reason on two occasions. At any rate, the contention is incorrect inasmuch as the petitioner's building is yet to be completed and even after completion of the building further relaxations are equally applicable. The contention that the petitioner approached this Court and deviated the approved plan by way of covering the driveway with RCC slab in basement floor in "A" block which is contrary to the building Rules is absolutely false. There has been no deviation and this is not the reason given in the impugned Order. It is also further stated that the order dated 30-5-2003 is per se bad in law and the petitioner is entitled for construction of 3 additional floors i.e., 11th, 12th and 13th. The respondent Corporation has not answered in its counter as to how G.O.Ms.No.33 is

attracted to the petitioner's case except making a mere statement and that by itself would not go to show that the petitioner is not entitled for the benefit under G.O.Ms.No.33 dated 3-3-2002. The petitioner has never suppressed anything before this Court and the petitioner was never called upon to give any security deposit.

7. In the light of the respective stands taken by the parties referred to supra, it may be appropriate to have a look at the relevant portion of **B.A.No.1768/96/ACP-I, dated 27-7-2001** and after certain particulars it was specified at the conclusion as hereunder:-

> *"Hence, I request to clarify whether :-*
>
> 1. *Can we permit the Multi-Storied Building above 30 mts. height.*
> 2. *Even though the F.S.I. is satisfying upto Thirteen Floors over and above 30 mts. height, whether extra Set Backs of 1 matter. For every 3 mts. height need to be insisted and whether relaxation of Set Backs can be granted as per G.O.Ms.No.15 MA, dt. 15-1-1998.*
>
> *The above two clarifications may kindly be issued for taking necessary permission to the applicant consisting Basement Floor + Stilt Floor (both for Parking) + Ground + Thirteen Floors above the height of 30 mts. (average height of 35.23 mts.) Subject to conditions to obtain clearance from the Air Port Authority as per*

G.O.Ms.No.423 MA, dt.30-7-1998 and G.O.Ms.No.15 MA, dt.15-1-98 relaxation of F.S.I. no doubt Set Backs.

Yours faithfully,
Sd/-
Sanjay Jaju,

COMMISSIONER,

MUNICIPAL CORPORATION

VISAKHPATNAM"

The Government of Andhra Pradesh Municipal Administration and Urban Development Department in Memo No.19758/M2/2001-2 M.A., dated 6-9-2002 after referring to letter B.A.No.1768/96/ACP-1, dated 27-7-2001 and also 7-4-2002, the Principal Secretary to Government at para 5 specified as hereunder:-

"Therefore, the Commissioner, Visakhapatnam Municipal Corporation is hereby directed to examine the entire issue afresh in light of the G.O.Ms.No.33 M.A., dated 3-2-2002 and in light of the other rules and regulations in force and take necessary further action accordingly if the applicant has surrendered the land on free of cost for widening of any Master Plan road / Zonal Development Plan road.

A.K.Goyal,
Principal Secretary to Government"

Despite the aforesaid order made by the Government referred to supra, again in B.A.No.1768/96/G2 dated 30-5-2003, after referring to the letter dated 5-5-2003, it was specified as hereunder:-

> *"With reference to your letter cited, it is to inform that the VUDA in its Resolution No.27 dated 22-9-97 approved the deletion of 30' scheme road, which was passing through your site subject to certain conditions. Accordingly, the VUDA vide in its proceedings R.C.No.1326/96/G1, dt 17-11-97 deleted to 30' road subject to the following conditions:*
>
> 1. *The applicant has to handover 924 sq.mts of land for road widening to enable the Visakhapatnam Municipal Corporation to widen the existing adjoining 20' road to make 30' road at free of cost as shown in the plan.*
> 2. *The applicant should form by widening 30' new road portion as per standard specifications of the Visakhapatnam Municipal Corporation for having proper approach to the site and existing Jain Temple.*
> 3. *He shall obtain building permission from Visakhapatnam Municipal Corporation by paying requisite development charges and submitting all necessary documents.*
>
> *At later stage, you have submitted building permission for construction of Multi-storied Building, accordingly the permission accorded in the year 1998. You have been given a benefit of*

deletion of road by VUDA and this Corporation for handing over 10' road strip to the Visakhapatnam Municipal Corporation to enable the authority to accord the building permission. The benefit shall be given only at once and not by number of times. The G.O.Ms.No.33 MA, dt.3-2-2001 is subsequent to the building permission and VUDA's proceedings dt.17-11-97. Hence, the grant of relaxation of set backs, FSI to your case does not arise and your request for considering three more additional floors over the permitted structure is hereby rejected and you are advised not to proceed with unauthorized construction."

8. It is needless to say that on a reading of the Memo.No.19758/M2/2001-2 M.A., dated 6-9-2002 referred to supra, it cannot be said that the impugned Order was made keeping in view the order made by the Government and in a way the impugned Order is not in accordance with what had been specifically specified by the Government referred to supra. Hence, this Court is of the considered opinion that the second respondent cannot make such an order. In view of the same, the impugned Order as such cannot be sustained and accordingly the same is hereby set aside and in the light of the proceedings referred to supra, the matter is again remitted to the second respondent to reconsider the whole

issue especially keeping in view what had been specified by the Government referred to supra and also taking into consideration all other facts and circumstances within a period of six weeks from the date of receipt of this order. The Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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Justice P.S.Narayana

14th September, 2006

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